INDEX

	Page
1. Introduction	1
2. Non-Submission to Congress of Interstate Compact Does Not Defeat Federal Jurisdiction	2
3. The General Bridge Act Does Not Constitute Congressional Consent to the Compact	3
4. Federal Legislation and Respondents' Contract with the United States Have Preempted the Sphere of This Controversy	6
5. Conclusion	7

CASES CITED

Parden v. *Terminal Ry.*, 377 U.S. 184, 84 S. Ct. 1207, 12 L. Ed. 2d 233 (1964) 1, 2, 6

Petty v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 276, 79 S. Ct. 785, 3 L. Ed. 2d 804 (1959) .. 1, 2, 3, 6

TABLE OF CONSTITUTIONAL PROVISIONS, STATUTES AND REPORTS

United States Constitution:

Article I, Section 10, Clause 3
Eleventh Amendment 1, 2

United States Code:

Title 23, Section 129 6
Title 33, Sections 401, 491 ..... 3, 4
Title 33, Section 525 ..... 2, 3, 6, 7
Title 45, Sections 51-56 6
Title 46, Section 688 6

Senate Report No. 1400, 79th Cong., 2d Sess., Legislative Reorganization Act of 1946 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 336

DELONG CORPORATION, a Delaware corporation,
Petitioner,

v.

THE OREGON STATE HIGHWAY COMMISSION, composed of Glenn L. Jackson, Kenneth N. Fridley and David B. Simpson, in their capacity as Oregon State Highway Commissioners, and individually, Forrest Cooper and Ivan D. Merchant,
Respondents.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

1. Introduction

Respondent's brief in opposition to the Petition for a Writ of Certiorari, received by Petitioner's Counsel on the third day of September, 1965, requires a brief reply on one point: Respondent's misinterpretation of the Compact Clause of the Constitution[1] and of this Court's rulings in *Parden*[2] and *Petty*[3].

[1] Constitution, Article I, § 10, Clause 3.

[2] *Parden* v. *Terminal Ry.*, 377 U.S. 184, 84 S. Ct. 1207, 12 L.Ed. 2d 233 (1964).

[3] *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 276, 79 S. Ct. 785, 3 L.Ed. 2d 804 (1959).

2. Non-Submission To Congress of Interstate Compact Does Not Defeat Federal Jurisdiction

Respondents never expressly deny that a compact was entered between the State of Washington and the State of Oregon. Nor do they admit it. But the record below is clear that the agreement of September 15, 1961, between "the State of Oregon" and "the State of Washington" (reproduced for the Court's convenience *infra* on pp. 1a-11a in the Appendix) as supplemented by the agreement of May 25, 1962 (reproduced *infra,* Appendix, pp. 12a-13a) definitely constitutes a compact within the purview of Article I, Sec. 10, Clause 3 of the Constitution. Respondents argue that by not having submitted this compact to Congress for its consent, they successfully avoided the insertion by Congress in the Consent of an express clause reserving jurisdiction, as in *Petty,* and thus may rely on Congress' alleged failure to legislate specifically on the subject matter of the compact. Alternatively, respondents argue that the general Congressional consent to the construction of bridges over navigable waters of the United States contained in the General Bridge Act, 33 U.S.C. 525, does supply the Constitutionally required consent of Congress to an interstate compact (Resp. Br., pp. 14-16).

We submit that the failure of Oregon and Washington to submit their compact to Congress for consent cannot defeat Federal jurisdiction. This is the very point of conflict with *Parden.* For the action of Oregon and Washington alone, the entering into this interstate compact, in an area constitutionally and historically within the sphere of Federal legislation and jurisdiction, constitutes the implied waiver of the Eleventh Amendment recognized in *Parden.* Such com-

pact constitutionally requires the consent of Congress and it must be assumed that had Oregon and Washington submitted their contract to Congress as required, Congress would, or at least could have included the *express* reservation of jurisdiction mentioned in *Petty*. In the *Petty* compact, Congress expressed a Federal jurisdictional reservation. But such jurisdictional reservation was present, regardless of the expression in the language of the compact. By not giving Congress the opportunity to express *in haec verba* the inherent Federal jurisdiction and power, Oregon and Washington did not and could not avoid the waiver of Eleventh Amendment immunity inherent in the making of the compact and in entering the Federal jurisdictional sphere.

3. The General Bridge Act Does Not Constitute Congressional Consent to the Compact

Similarly unavailing is the argument that the General Bridge Act supplies the consent required by the Compact Clause.

The legislative history of the General Bridge Act indicates that the consent of Congress to the construction of interstate bridges contained in 33 U.S.C. 525 was intended only to constitute the specific consent to construction (that is, the location and clearances) of a bridge "over navigable waters" *intra*state as well as *inter*state, expressly required under 33 U.S.C. 401 and 491.

S. Report No. 1400, 79th Cong., 2d Sess., Legislative Reorganization Act of 1946, states at page 34:

> "The object of the proposed title is to eliminate the necessity of a special act of Congress to authorize the construction of each individual bridge by giving general consent to all bridges the loca-

tion, plans and specifications of which are approved by the Secretary of War and the Chief of Engineers."

The lower Courts cite no authority for the proposition that the General Bridge Act gives blanket and advance Congressional consent to compacts between the States as long as they involve interstate bridges. To reach this conclusion would require reasoning that Congress, in waiving the statutory (not Constitutional) requirement of 33 U.S.C. 401 for specific consent to the construction, location and clearances of each bridge over navigable waters, did also intend, by the enactment of the General Bridge Act, to yield up to the Secretary of the Army its Constitutional duties and prerogatives with respect to all other terms of interstate compacts, whenever interstate bridges are involved.

In addition to providing for a bridge, the compact between Washington and Oregon contains agreements which affect interstate commerce, interstate highways, transportation of the mails, defense considerations, Federal budget considerations, Federal Court jurisdiction, etc., all of which are of interest not only to the two States most closely involved, but to the citizens of every State as represented by Congress. Congress, therefore, cannot possibly be held to have given the consent required by the Constitution to these multi-faceted compacts by the blind advance and carte blanche consent to the location and clearances of bridges over navigable waters.

A great number of compacts involving interstate bridges have been submitted to, and approved by Congress subsequent to the enactment of the General Bridge Act.

In the light of these recently approved interstate compacts involving interstate bridges, it is apparent that it is still the Congressional intent to retain its jurisdiction over such compacts, in accordance with Constitutional requirements.[4]

---

[4] The following legislation regarding interstate bridge construction was enacted subsequent to 1946 and the documents hereinafter listed are illustrative:

1. P. L. 355, 80th Cong. (H. R. 4140). An Act granting consent to a compact re: Delaware River Joint Toll Bridge Commission.
2. P. L. 859, 80th Cong. (H. R. 6465) to amend and supplement Act re: Delaware River Joint Toll Bridge Commission.
3. P. L. 220, 81st Cong. (S. 1577). An Act re: City of Clinton Bridge Commission.
4. P. L. 411, 81st Cong. (H. R. 6109). Consent to compact re: Tennessee-Missouri Bridge Commission.
5. P. L. 574, 82d Cong. (H. R. 8316). An Act granting consent to supplemental compact re: Delaware River Joint Toll Bridge Commission.
6. P. L. 70, 83d Cong. (H. R. 2761). An Act re: City of Clinton Bridge Commission.
7. P. L. 366, 83d Cong. (S. 2120). An Act re: Maine-New Hampshire Interstate Bridge Authority.
8. P. L. 328, 84th Cong. An Act authorizing Arkansas-Missouri Bridge Commission.
9. P. L. 811, 84th Cong. An Act creating Muscatine Bridge Commission.
10. P. L. 85-113, 85th Cong. An Act re: construction and maintenance of bridge by Dept. of Highways, State of Minnesota.
11. P. L. 85-221, 85th Cong. An Act re: bridge across Bear Creek, Baltimore County, Md.
12. P. L. 85-504, 85th Cong., re: Lake Champlain Bridge Commission.
13. P. L. 85-653, 85th Cong. An Act re: Tennessee-Tombigbee Waterway Development compact.
14. P. L. 85-857, 85th Cong. An Act re: City of Clinton Bridge Commission.
15. P. L. 87-644, 87th Cong. An Act re: construction of certain bridges over and across the Delaware River.
16. P. L. 87-744, 87th Cong. An Act re: certain additional toll bridges over or across the Delaware River and Bay.

4. Federal Legislation and Respondents' Contract With the United States Have Pre-empted the Sphere of This Controversy

In addition, Respondents' argument that the General Bridge Act provides the Constitutionally required Congressional consent to the compact is self-defeating. If this were so, the General Bridge Act, 33 U.S.C. 525 would constitute the specific Federal legislation in the field, the alleged absence of which in this case, according to Respondents, distinguishes it from *Petty* (Jones Act, 46 U.S.C. 688) and *Parden* (Federal Employers' Liability Act, 45 U.S.C. 51-56) (Resp. Br. 15, *et seq.*). The burden of the complaint below was that Respondents furnished false and fraudulent specifications in violation of the provisions of this General Bridge Act and the Regulations issued thereunder, and similarly violated the provisions of Title 23, U.S.C. and the applicable Rules and Regulations of the Bureau of Public Roads issued thereunder and expressly made applicable to this project by a written agreement between Respondents and the United States of America (App., *infra,* pp. 14a *et seq.*).

There is no dearth of other specific Federal involvement in this project and in this controversy. The aforementioned agreement with the United States (Appendix, *infra,* pp. 14a *et seq.*) recites expressly that Federal aid will be received for the construction of approaches to the bridge and for the retirement of the bonds financing the entire project (Agreement with the United States, para. 3, App. p. 14a). The agreement recites further that Washington and Oregon "have agreed to be bound" by and to comply with the provisions of Section 129, Title 23, U.S.C. (*ibid.,* para. 4). Both States expressly agreed with the United States

that all provisions of the construction permit obtained from the Department of the Army of the United States, pursuant to Sections 525-534, Title 33 of U.S.C., the very statute on which Respondents rely for Congressional consent to their compact, "will be observed and performed by Washington and Oregon".

It is this "observance and performance" which is the subject matter of this suit below, a controversy that by now, in addition to Respondents, involves at least three private corporations, "citizens" of States other than Oregon, and must and will involve directly or indirectly the Federal government itself before a full and final adjudication of all its aspects can be had.

5. Conclusion

For the reasons urged in the Petition and in this Reply, it is prayed that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit be granted.

Respectfully submitted,

BERT B. RAND and
HANS A. NATHAN,

September 14, 1965.

by

Hans A. Nathan,
1730 K Street, N.W.,
Washington, D.C. 20006
Counsel for Petitioner.

APPENDIX

AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of September, 1961, by and between the STATE OF OREGON, by and through its State Highway Commission, hereinafter referred to as "Oregon," and the STATE OF WASHINGTON, by and through its State Highway Commission, hereinafter referred to as "Washington";

WITNESSETH:

RECITALS:

1. Washington and Oregon, after extensive study and research of problems pertaining to roads and bridges between the states, have heretofore mutually agreed upon the need for the construction, maintenance and operation of a new interstate bridge, including approaches thereto in both states, across the Columbia River between Astoria, Oregon, and U.S. Highway 101 on the north bank of the Columbia River near Point Ellice and Megler, Washington to accommodate the present and anticipated volume of traffic between said states.

2. The legislative assemblies of Washington and Oregon have enacted respectively Chapter 209, Washington State Session Laws of 1961, and Chapter 345, Oregon Laws, 1961, which laws in conjunction with other statutory powers and authority of the State Highway Commissions of each state, grant legislative authority for the construction of the proposed said new bridge, including approaches thereto, the maintenance and operation of said proposed new bridge, the raising of necessary funds for the construction of said new bridge, the imposition and collection of tolls for the use of said new bridge, and further grant legislative authority for the parties hereto to enter into any and all

APPENDIX

such agreements with each other or with other parties as are necessary for the accomplishment of such purposes.

3. The most economical and feasible method of financing the construction of the main river portion of the said new bridge is by the sale of bonds by Oregon as provided in Chapter 345, Oregon Laws, 1961, and if necessary the sale of refunding bonds as provided in ORS 366.7026. The estimated cost of the construction of the main river portion of said bridge is the sum of $24,000,000.

4. Oregon and Washington wish to provide for the payment of costs incurred in the operation and maintenance of said bridge during the period it is operating as a toll bridge and also for the issuance and sale of bonds, including refunding bonds if necessary by Oregon, for the purpose of providing sufficient funds for:

A. The location, design and construction including engineering and other costs incidental to such construction of said proposed main river bridge as hereinafter described.

B. Payment of the costs and expenses incurred in connection with the issuance and sale of such bonds as are necessary for the construction of the said main river bridge and to pay interest on said bonds from the date of issuance to a period ending six (6) months after said bridge is open to traffic and tolls are imposed for the use thereof.

5. Oregon and Washington desire to provide for the imposition and collection of toll charges for the use of said bridge, for the purpose of creating revenues to:

A. Pay the cost of operating said main river bridge, including insurance, until such time as all bonds and interest thereon issued for the construction of said

main river bridge including any refunding bonds shall have been paid.

B. Pay the principal and interest on said bonds.

C. Reimburse the respective states for any payments made by them pursuant to Article 8-(B) of the GENERAL PROVISIONS for the cost of construction and acquisition of said main river bridge.

D. Pay, after all said bonds are retired, during the period the respective states are being reimbursed, as provided in subparagraph C above, the cost of operating and maintaining said main river bridge. Payment for the cost of operating and maintaining said main river bridge as provided in this subparagraph shall be made only if Oregon and Washington subsequently enter into a supplementary agreement as hereinafter provided.

6. Both parties to this agreement have fulfilled all of their respective statutory requirements for the execution of this agreement. Attached hereto marked Exhibit "A" and "B," and by this reference made a part hereof are an assignment and repayment agreement between Washington and Pacific County, Washington, which meet the requirements of Section 7 of Chapter 209 Washington State Session Laws of 1961.

NOW, THEREFORE, the facts being generally as set forth above, it is mutually agreed by and between the parties hereto as follows:

1. Upon the execution of this agreement by the parties hereto, plans shall be perfected, and the necessary action taken, for the construction of a new, two-lane bridge, including approaches thereto in both states, across the Columbia River between Astoria, Oregon and the vicinity of Point Ellice and Megler, Washington.

2. Attached hereto marked Exhibit "C," and by this reference made a part hereof, is a sketch map upon which is indicated the location of the proposed new bridge, including approaches thereto in both states. The construction of said new bridge shall be divided into three (3) sections described as follows:

A. The southerly, or Oregon approach to the said bridge shall be the structure and approach extending from a connection with Marine Drive at the foot of Kingston Avenue easterly and northerly to a pier, the center line of which is at Highway Engineer's Station 318 + 97.17, including revisions to Marine Drive but not including said pier or the toll plaza and facilities for toll collection.

B. The said main river bridge shall extend from a pier, the center line of which is at Highway Engineer's Station 318 + 97.17 including said pier, thence northerly across the main channel, Desdemona sands and the northerly ship channel to and including a pier, the center line of which is at Highway Engineer's Station 118 + 21.00.

C. The northerly, or Washington, approach to said bridge shall be from a pier, the center line of which is at Highway Engineer's Station 118 + 21.00, but not including said pier, northerly to a connection with U.S. Highway 101 in the State of Washington on the north shore of the Columbia River and including any revisions to the said U.S. Highway 101 because of said connection.

3. The cost of constructing a parking area, toll business office, and toll collection facilities, located on the Oregon approach at approximately Highway Engineer's Station 338 + 50 as shown outlined in red on the plans attached hereto, marked Exhibit "D," and by this reference made a

part hereof shall be paid from the same funds as the cost for the said main river bridge.

The above purposes shall be accomplished pursuant to the following mutual arrangements and respective obligations:

THINGS TO BE DONE BY OREGON:

1. Oregon by execution of this agreement approves and agrees to the provisions set forth in the RECITALS, THINGS TO BE DONE BY WASHINGTON, and GENERAL PROVISIONS.

2. Oregon shall make all surveys, foundation explorations, and other engineering investigations necessary for the preliminary determination of structural type, pier locations and other engineering features for the said main river bridge between Highway Engineer's Station 118 + 21.00 and Highway Engineer's Station 318 + 97.17.

3. Oregon shall make estimates of the total construction cost of the said main river bridge and shall submit engineering data and cost estimates to Washington for its review and approval.

4. Oregon shall prepare plans and specifications and award a contract for the construction of the Oregon approach as hereinbefore described and shall from its own funds, or together with such federal funds as may be available, pay all costs of the Oregon approach including the cost of right of way.

5. Oregon in cooperation with Washington shall prepare designs and specifications for the said main river bridge. The design of the said main river bridge shall be a cooperative project between Oregon and Washington. Oregon shall prepare plans for the piers and the concrete viaduct and Washington shall prepare plans for the structural steel spans across the main river and the north river channels. The said main river bridge plans prepared by each party shall be reviewed by the other party and any differ-

ences reconciled by conference. Upon completion and approval of the said plans and specifications for the said main river bridge, Oregon shall advertise for competitive bids and with the approval of Washington award a contract for the construction and supervise the construction of said main river bridge.

6. Oregon shall construct the parking area, toll business office and toll collection facilities as shown on the attached Exhibit "D." The cost for the above items is to be paid as provided in paragraph 3 on page 4 of this agreement.

7. Upon completion of the said new bridge, Oregon shall operate the bridge including the collection of tolls. All costs for the operation including the collection of tolls, shall be paid from revenues derived from tolls imposed.

8. When the said river bridge is completed and opened to traffic, Oregon shall maintain, at its own cost, the Oregon approach as hereinbefore described.

9. Oregon shall maintain the said main river bridge and shall keep account of all costs therefor and at appropriate intervals submit a bill for one-half of the maintenance costs to Washington. Upon receipt of such billing Washington shall reimburse Oregon for one-half of said maintenance costs.

10. Oregon shall maintain the said Washington approach to said main river bridge and shall keep account of all costs thereof and at appropriate intervals submit a bill for the total of said maintenance costs to Washington. Upon receipt of such billing Washington shall reimburse Oregon for the full amount of the said maintenance cost for said Washington approach.

THINGS TO BE DONE BY WASHINGTON:

1. Washington by execution of this agreement approves and agrees to the provisions set forth in the RECITALS, THINGS TO BE DONE BY OREGON, and GENERAL PROVISIONS.

2. Washington shall cooperate with Oregon in the design of the said main river bridge and shall design all of the structural steel spans in the project over the main river and the north river channels as provided in paragraph 5 under THINGS TO BE DONE BY OREGON.

3. Washington shall submit said structural steel span plans to Oregon for review and approval and shall also review and approve the plans for the remaining portion of the said main river bridge which will be prepared by Oregon, and any differences reconciled by conference.

4. Washington shall review and approve the bids for the construction of the said main river bridge before the award of a contract by Oregon.

5. Washington shall reimburse Oregon for one-half of the cost of maintaining said main river bridge after completion as provided in paragraph 9 under THINGS TO BE DONE BY OREGON.

6. Washington shall reimburse Oregon for all of the cost of maintaining the Washington approach to said bridge as provided in paragraph 10 of THINGS TO BE DONE BY OREGON.

7. Washington shall prepare plans and specifications and award a contract for the construction of the said Washington approach as hereinbefore described and shall from its own funds, or together with such federal funds as may be available, pay all costs of the Washington approach including the cost of right of way.

GENERAL PROVISIONS:

1. Oregon after consultation with Washington shall fix the classifications and amounts of tolls to be imposed and collected for the use of the bridge and also the time or times when such tolls shall first be imposed. Oregon after consultation with Washington may from time to time revise said classifications and amounts of said tolls.

2. If either party elects to use federal-aid funds, the other party shall cooperate and if necessary execute any affirmance or consent necessary.

3. Each state shall be reimbursed from the proceeds of the sale of bonds as hereinbefore set out for any cost incurred after March 1, 1961, in connection with the location, design and construction of the said main river bridge. The payment for the said costs shall be made only after a duly verified itemized statement of such advances and expenses have been submitted to and jointly approved by both Oregon and Washington.

4. To the end that the said main river bridge shall become a toll-free bridge when all of the costs of construction and acquisition of the said main river bridge have been fully paid, it is specifically agreed that all tolls received from the operation of the said main river bridge, less the actual cost of operation (and possibly the cost of operation and maintenance as hereinafter provided in paragraph 5 of these GENERAL PROVISIONS) shall be first applied to paying of the principal, interest and other incidental charges to the issuance, sale and retirement of all bonds issued under the provisions of Chapter 345, Oregon Laws 1961, and refunding bonds, if any, issued under the provisions of ORS 366.7026 for the purpose of refunding outstanding bonds issued under the provisions of said Chapter 345, Oregon Laws, 1961; (except as provided in paragraph 7 of these GENERAL PROVISIONS) and secondly to repaying the respective states as their interest may appear for all of the costs of construction and acquisition of the said main river bridge incurred by them pursuant to the provisions of paragraph 8-(B) of these GENERAL PROVISIONS, except such amounts as may have been contributed by the United States; provided further that no tolls shall be charged for the use of the said main river bridge after the respective states shall have been so repaid and after the date of final repayment the bridge shall be maintained and operated as a free bridge.

5. When all bonds referred to in paragraph 4 of these GENERAL PROVISIONS have been retired, Oregon and Washington may, if they desire, enter into a supplemental agreement to provide that the cost of operating and maintaining said main river bridge shall be paid from the tolls collected for the use of said main river bridge until such time as the states are fully reimbursed for their costs of construction and acquisition of said main river bridge as set forth in said paragraph 4 and 8-(B) of these GENERAL PROVISIONS. Nothing in this paragraph shall be construed to provide for the use of tolls for any purpose in violation of either State's statutes that may be controlling at the time the costs provided for in paragraph 4 of these GENERAL PROVISIONS are paid.

6. In the construction of the said new bridge and the use, maintenance and operation of said bridge due regard and adherence shall be given to all applicable state and federal statutes, and to all rules, regulations and requirements of the United States or its agencies.

7. The cost of constructing the said main river bridge shall be paid from funds derived from the sale of bonds as provided in Chapter 345, Oregon Laws, 1961, the bonds to be the obligation of Oregon and to be sold by Oregon. The cost of constructing the said main river bridge shall include the costs incurred in connection with the issuance, sale of said bonds; the payment of interest on said bonds from the date of the issuance to a period ending six (6) months after said bridge is opened to traffic and tolls imposed for the use thereof and all costs incurred as provided in paragraph 3 of these GENERAL PROVISIONS. The bonds shall mature serially over a 30-year period. The terms of the sale of the bonds shall be approved by Washington. The bond sale provisions shall be so worded that two issues may be sold, the first to cover the piers and right of way, the second to complete the project. The estimated cost of the said main river bridge is the sum of $24,000,000, however, this final figure may be adjusted downward when bids

have been received and cost accurately determined. In that event bonds of a lesser amount may be sold.

8. Principal and interest thereon on all bonds sold pursuant to this agreement shall be paid as follows:

A. The yearly balance of the receipts from tolls and franchise fees remaining after the payments for the yearly costs of operation, excluding maintenance, of said bridge, including cost of insurance, shall be applied to the payment of principal and interest on all bonds issued and other charges incidental to the issuance, sale of refunding bonds, if any, and retirement of initial and refunding bonds.

B. To the extent that the balance of the above revenues derived from the imposition and collection of tolls and franchise fees for the use of the said bridge in any year are insufficient to provide for the payment of principal, interest and other charges incidental to the issuance and sale of refunding bonds, if any, and the retirement of initial and refunding bonds, Oregon shall pay the first $100,000 of such deficit for such year. Washington shall not be required to participate in the first said $100,000 deficit but shall pay when due 40 per cent of the balance of any further such deficit for such year; except that in no case shall the portion of such deficit paid by Washington exceed the sum of $200,000 in any such year. Washington agrees and acknowledges that its portion of said deficit, if any, shall constitute a first and prior charge against all revenue hereafter derived from the proceeds of Washington State excise taxes on motor vehicle fuel now directed by law to be deposited in the motor vehicle fund available for Washington State Highway Commission purposes as is provided in Section 4, Chapter 209, Washington State Session Laws, 1961.

9. Oregon and Washington agree that so much of said bridge as is within the boundaries of each state shall be made a part of the highway system of the respective states.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals as of the day and year first above written.

STATE OF OREGON, by and through its State Highway Commission

M. K. McIVER, *Chairman*

K. N. FRIDLEY, *Commissioner*

GLENN JACKSON, *Commissioner*

WASHINGTON STATE HIGHWAY COMMISSION, by W. A. Bugge, Director of Highways

W. A. BUGGE
W. A. Bugge

ATTEST:

FLOYD QUERY, *Secretary*

APPROVED:

W. C. WILLIAMS
State Highway Engineer

APPROVED AS TO FORM:

L. I. LINDAS, *Chief Counsel*

APPROVED AS TO FORM:

DELBERT JOHNSON
Assistant Attorney General

JLS:ckr
Rev. 9/13/61

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of May, 1962, by and between the State of Oregon, by and through its State Highway Commission, hereinafter referred to as "Oregon" and the State of Washington, by and through its State Highway Commission, hereinafter referred to as "Washington":

WITNESSETH:

RECITALS:

1. Washington and Oregon have heretofore, on the 15th day of September, 1961, entered into an agreement providing for the financing, construction and operation of an interstate toll bridge across the Columbia River in the vicinity of Megler, Washington, and Astoria, Oregon.

2. Since entering said agreement Washington and Oregon have concluded that it would be advisable to establish the eligibility of said highway bridge project for federal aid and have approved and tendered to the Bureau of Public Roads for execution an agreement for accomplishment of that purpose, pursuant to the Federal Aid Highway Act.

3. Pursuant to the agreement with the Bureau of Public Roads, Oregon and Washington are obligated to presently program 1% of the estimated cost of the proposed bridge project as a condition of eligibility for federal aid. For the purpose of qualifying for federal aid, Oregon and Washington must agree upon a division of the necessary 1% of estimated costs between the two states.

NOW, THEREFORE, in consideration of the agreement of the parties and the mutual benefits to be derived therefrom,

IT IS AGREED that Oregon shall, from its own federal aid allocation, program 70% of the 1% of federal aid funds required for eligibility under the said agreement with the Bureau of Public Roads and Washington shall, from its federal aid allocation, program 30% of the 1% of said funds.

IT IS FURTHER AGREED that in making such a division for the purpose of qualifying for federal aid, the states do not agree, or imply that their respective responsibility, financial or otherwise in said bridge, in any other respect, shall be affected by this agreement, nor shall their actions in this respect be construed as an equitable apportionment of the responsibility of each state in the event that at some future date additional federal aid or state monies are programed or used in the financing, construction or maintenance of the said bridge, or in retirement or refunding of any bonds issued in connection therewith.

IN WITNESS WHEREOF the parties hereto have subscribed their names, and affixed their seals, as of the day and year first above written.

STATE OF OREGON, by and through its State Highway Commission.

GLENN JACKSON, *Chairman*

DAVID B. SIMPSON, *Commissioner*

WASHINGTON STATE HIGHWAY COMMISSION

W. A. BUGGE,
W. A. Bugge, *Director of Highways*

ATTEST:

FLOYD QUERY, *Secretary*

APPROVED:

FORREST COOPER, *State Highway Engineer*

APPROVED AS TO FORM:

L. I. LINDAS, *Chief Counsel*

APPROVED AS TO FORM:

DELBERT JOHNSON
Assistant Attorney General

AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of May, 1962, by and between the UNITED STATES OF AMERICA, by and through its Bureau of Public Roads, Department of Commerce, hereinafter called "United States"; the STATE OF OREGON, by and through its State Highway Commission, hereinafter called "Oregon"; and the STATE OF WASHINGTON, by and through its State Highway Commission, hereinafter called "Washington";

WITNESSETH:

RECITALS:

1. Pursuant to Chapter 209, Washington Laws of 1961, and Chapter 345, Oregon Laws of 1961, Washington and Oregon are undertaking the construction of a new interstate toll bridge, including the approaches thereto, in both states across the Columbia River on the route of U. S. Highway 101 from the north bank of the Columbia River near Point Ellice and Megler, Washington, to Astoria, Oregon, as shown on the map attached hereto marked "Exhibit A" and by this reference made a part hereof.

2. The proposed new bridge is to be financed as a bond project and operated as a toll bridge through joint and cooperative efforts of Washington and Oregon in financing, constructing, maintaining and operating the bridge, pursuant to an existing agreement between Washington and Oregon, a copy of which is attached hereto, marked "Exhibit B" and by this reference made a part hereof.

3. It is necessary that Oregon, which has the obligation to construct the Oregon approaches to the bridge, receive federal aid in the construction of said approaches. Both Washington and Oregon desire that the whole of the project be constructed pursuant to Title 23, U. S. Code, and the applicable rules and regulations of the Bureau of Public Roads relating thereto, in order that the project may be

eligible for federal aid and that the bonds issued and to be issued in the financing of said project may be retired in the future with federal aid at such time as Washington and Oregon shall choose to do so.

4. Washington and Oregon have agreed to be bound by and to comply with the provisions of Section 129, Title 23, U.S.C., as expressly set forth in the resolutions of the highway commissions of Washington and Oregon, copies of which are attached hereto, marked "Exhibit C" and by this reference made a part hereof.

5. United States, pursuant to Title 23, U.S.C., and its applicable rules and regulations, is willing to participate financially with Washington and Oregon in the construction of the bridge, and agrees that the bridge shall be a federal aid project on condition that it be made toll free within a reasonable time, as hereinafter provided.

Now, Therefore, the premises being in general as stated in the foregoing Recitals, it is hereby mutually agreed by and between the parties hereto as follows:

1. United States will consent to the programming of the Astoria-Megler Interstate Bridge and approaches thereto as a federal aid project and will participate in the costs of construction of the bridge and approaches as an interstate toll facility pursuant to the provisions of Title 23, U.S.C.

2. Washington and Oregon agree with United States, and with each other, to be bound by the provisions of Section 129, Title 23, U.S.C., as follows:

a. All tolls received from the operation of the bridge, less the actual cost of the operation and maintenance thereof, if Washington and Oregon agree to deduct the costs of operation and maintenance, shall be applied to repayment to Washington and Oregon, and other proper public authorities, of all the costs of con-

struction of the bridge and approaches except that part of the costs contributed by the United States.

b. No tolls shall be charged for the use of the bridge after Washington and Oregon, and other proper public authorities, have been repaid.

c. After the date of final repayment, the bridge will be maintained and operated as a free bridge.

3. In order to assure United States that the bridge shall ultimately become toll free and be operated as a free bridge within a reasonable time, Washington and Oregon further agree with United States, and with each other, that all of the provisions of the permit, a copy of which is attached hereto, marked "Exhibit D" and by this reference made a part hereof, issued by the Corps of Engineers, Department of the Army of United States, to the State of Oregon, pursuant to Sections 525-534, Title 33, U.S.C., permitting construction of the bridge across the navigable waters of the Columbia River, and the provisions of all applicable federal law, will be observed and performed by Washington and Oregon.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

By DAVID S. BLACK

WASHINGTON STATE HIGHWAY COMMISSION

By W. A. BUGGE

OREGON STATE HIGHWAY COMMISSION

By GLENN JACKSON, *Chairman*
By K. N. FRIDLEY, *Commissioner*
By DAVID B. SIMPSON, *Commissioner*

APPROVED:

DELBERT JOHNSON
Assistant Attorney General
Washington State

APPROVED:

L. I. LINDAS
Chief Counsel
Oregon State Highway Commission

JSI:ckr
4/2/62

END